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9
10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

13 JENNIE FRERE,

14 Plaintiff,

15 vs.

16 MEDTRONIC, INC. and DOES 1
17 THROUGH 50, INCLUSIVE,

18 Defendants.
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) Case No. 15-cv-2338

)

) **DEFENDANT MEDTRONIC,**
) **INC.'S NOTICE OF REMOVAL;**
) **EXHIBITS A - E**

)

) Complaint Filed: April 22, 2015

) Trial Date: Not Scheduled

)

)

)

1 Defendant Medtronic, Inc. (“Medtronic”)¹ respectfully gives notice that,
 2 pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, it has removed the above-entitled
 3 action to the United States District Court for the Central District of California,
 4 Eastern Division, from the Superior Court of California, County of San Bernardino.
 5 In support, Medtronic states as follows:

6 **I. MEDTRONIC HAS SATISFIED THE PROCEDURAL**
 7 **REQUIREMENTS FOR REMOVAL.**

8 1. Plaintiff filed this civil action on April 22, 2015, in the Superior Court
 9 of California, County of San Bernardino, originally styled *Jennie Frere v.*
 10 *Medtronic PLC et al.*, Case No. CIVDS1505761. A copy of Plaintiff’s Complaint,
 11 Summons, and associated paperwork served upon Medtronic is attached hereto
 12 as Exhibit A.

13 2. This Notice of Removal is timely because it is filed within 30 days of
 14 Medtronic’s receipt of papers showing that the case has become removable
 15 (namely, orders granting Plaintiff’s requests for dismissal of all non-diverse
 16 defendants) and within 1 year of the date of commencement of this action. On
 17 October 14, 2015, the state court entered Plaintiff’s Request for Dismissal of
 18 Defendant St. Mary Medical Center. (Ex. B.) The next day, the court entered
 19 Plaintiff’s Request for Dismissal of the last non-diverse defendant, Joe Park, M.D.
 20 (Ex. C.) Medtronic obtained copies of the dismissal orders on October 16, 2015.
 21 This removal notice is therefore timely. 28 U.S.C. § 1446(b)(3) (“[I]f the case
 22 stated by the initial pleading is not removable, a notice of removal may be filed
 23 within thirty days after receipt by the defendant, through service or otherwise, of a
 24

25 ¹ The Complaint initially and incorrectly named “Medtronic PLC” as a
 26 defendant. (Ex. A at 2, 7.) On October 2, 2015, the state court corrected the error
 27 by substituting Medtronic, Inc. for Medtronic PLC. (*See* Ex. D (list of parties from
 28 state docket).)

1 copy of an amended pleading, motion, order, or other paper from which it may first
 2 be ascertained that the case is one which is or has become removable.”); *Harris v.*
 3 *Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005) (“[E]ven if a case were
 4 not removable at the outset,” it may be “rendered removable by virtue of a change
 5 in the parties or other circumstance revealed in a newly-filed ‘paper’”); *see also* 28
 6 U.S.C. § 1446(c)(1) (removal under Section 1446(b)(3) must be taken within 1 year
 7 of commencement unless the district court finds that the plaintiff acted in bad faith
 8 to prevent removal).

9 3. The United States District Court for the Central District of California,
 10 Eastern Division, is the proper venue for removal of this action because “the district
 11 and division embracing the place where such action is pending” is San Bernardino
 12 County, California. 28 U.S.C. § 1441(a).

13 4. Pursuant to 28 U.S.C. § 1446(d), written notice of this removal will be
 14 filed with the Clerk of the Superior Court of California, San Bernardino County,
 15 and Medtronic will serve a copy of the Notice of Removal on all parties to the case.
 16 A copy of the Notice to the Clerk of the Superior Court of California, San
 17 Bernardino County is attached hereto as Exhibit E.

18 5. By filing this Notice, Medtronic does not waive its right to assert any
 19 defense or affirmative matter, including without limitation the defenses listed in
 20 Federal Rule of Civil Procedure 12(b) and any other procedural or substantive
 21 defenses available to Medtronic under state or federal law.

22 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT**
 23 **MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332.**

24 6. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)
 25 because this is a civil action between citizens of different states in which the
 26 amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.
 27 Removal is appropriate under 28 U.S.C. § 1441(b) because complete diversity of
 28

1 citizenship exists between Plaintiff and Medtronic and Medtronic is not a citizen of
2 California, the state in which this action was brought.

3 **A. Complete Diversity of Citizenship Exists Between the Parties.**

4 7. Complete diversity exists between the parties to this action. As
5 reflected in the Complaint, Summons, and associated paperwork, Plaintiff was
6 domiciled in Victorville, California at the time she initiated this lawsuit. (Ex. A at
7 1, 3-5, 7.) Plaintiff is therefore a citizen of California.

8 8. Medtronic, Inc. is incorporated under the laws of the State of
9 Minnesota with its principal place of business at 710 Medtronic Parkway, LC 355,
10 Minneapolis, Minnesota 55432. Medtronic, Inc. is therefore a citizen of Minnesota.
11 *See* 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010)
12 (principal place of business is “the place where a corporation’s officers direct,
13 control, and coordinate the corporation’s activities”).

14 9. Removal is appropriate because complete diversity of citizenship
15 exists between the parties (disregarding defendants sued under fictitious names, 28
16 U.S.C. § 1441(b)(1)) and Medtronic is not a citizen of California, the state in which
17 this action was brought. *See* 28 U.S.C. § 1441(b)(2).

18 **B. The Amount-in-Controversy Requirement is Satisfied.**

19 10. The amount-in-controversy requirement of 28 U.S.C. § 1332 is also
20 satisfied. Under 28 U.S.C. § 1332(a), the amount in controversy in a case where
21 federal jurisdiction is based upon diversity of citizenship must exceed \$75,000,
22 exclusive of interest and costs.

23 11. Plaintiff’s Summons indicates that she seeks “[u]nlimited” damages
24 for personal injuries in excess of \$25,000 (Ex. A at 5), but her Complaint does not
25 allege a specific amount in controversy. This is likely because California law bars a
26 plaintiff from stating the amount demanded in a complaint that seeks damages for
27 personal injury. CCP § 425.10(b). Where, as here, state pleading practices do not
28 permit demand for a specific sum, “the notice of removal may assert the amount in

1 controversy.” 28 U.S.C. § 1446(c)(2)(A). The notice “need include only a
 2 plausible allegation that the amount in controversy exceeds the jurisdictional
 3 threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554
 4 (2014). Removal is proper “if the district court finds, by the preponderance of the
 5 evidence, that the amount in controversy exceeds” \$75,000. 28 U.S.C. §
 6 1446(c)(2)(B). “[T]he defendant’s amount-in-controversy allegation should be
 7 accepted when not contested by the plaintiff or questioned by the court.” *Dart*, 135
 8 S. Ct. at 553.

9 12. Although Medtronic denies any liability for Plaintiff’s alleged injuries
 10 and damages, the amount in controversy clearly exceeds \$75,000. Plaintiff alleges
 11 that a neuromodulation pump manufactured by Medtronic was implanted into her
 12 body in December 2011 and subsequently malfunctioned. (Ex. A ¶¶ 15-16.)
 13 Specifically, her device “failed to administer the medications as expected, causing
 14 the need for a revision surgery on January 23, 2014.” (*Id.* ¶ 16.) Further, during
 15 the revision surgery, Plaintiff’s physician allegedly discovered that “the intrathecal
 16 catheter tip had broken off and was lodged inside of the Plaintiff, causing injury to
 17 the Plaintiff.” (*Id.*) Plaintiff’s device and the catheter tip were allegedly removed
 18 during another procedure in March 2014. (*Id.*) As a result of these events, Plaintiff
 19 allegedly suffered “severe personal injuries, pain and suffering, mental anguish, and
 20 emotional distress all to her general damage,” including “liability for medical aid
 21 and attention, hospitalization, x-rays, nursing care, and drugs for proper care and
 22 treatment of Plaintiff’s said injuries.” (*Id.* ¶¶ 18-19.) Plaintiff also asserts that she
 23 will “continue to incur . . . liability for an indefinite time in the future.” (*Id.*) She
 24 seeks compensatory as well as punitive damages. (*Id.* ¶¶ 17-18.) These allegations
 25 of multiple surgeries and hospital stays, severe personal injuries, ongoing medical
 26 expenses, pain, suffering, and emotional distress amply demonstrate that the
 27 amount in controversy more likely than not exceeds \$75,000.
 28

1 13. Courts across the country regularly hold that cases involving serious
2 physical injuries, such as those alleged here, satisfy the amount-in-controversy
3 requirement. *See, e.g., Marsar v. Smith & Nephew, Inc.*, 950 F. Supp. 2d 1228,
4 1229-30 (M.D. Fla. 2013) (denying motion to remand in wrongful-death products
5 liability claims where plaintiff sought unspecified damages in excess of \$15,000);
6 *McCoy by Webb v. Gen. Motors Corp.*, 226 F. Supp. 2d 939, 941 (N.D. Ill. 2002)
7 (“courts have routinely held that when plaintiffs allege serious, permanent injuries
8 and significant medical expenses, it is obvious from the face of the complaint that
9 the plaintiffs’ damages exceeded the jurisdictional amount”) (collecting cases); *In*
10 *re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296 (S.D.N.Y. 2001) (finding
11 complaint “obviously asserts a claim exceeding \$75,000” where plaintiff sought
12 damages for alleged “serious and life-threatening medical conditions” due to the
13 use of a prescription medication).

14 14. Medtronic need not confirm through discovery in state court that the
15 jurisdictional amount is satisfied. Indeed, “a defendant who wishes to remove a
16 case to federal court cannot ‘wait for discovery responses that simply confirm what
17 was obvious from the face of the complaint; in such cases, defendants are not
18 insulated from a remand to state court.’ It is not the law that ‘cases are not
19 removable until there has been an absolute affirmation via discovery . . . that more
20 than \$75,000 [is] in issue.’” *Fields v. Jay Henges Enters., Inc.*, No. 06-323-GPM,
21 2006 WL 1875457, at *3 (S.D. Ill. June 30, 2006) (quoting *McCoy*, 226 F. Supp. 2d
22 at 941); *see also Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1064 (11th Cir. 2010)
23 (“[W]hen a district court can determine, relying on its judicial experience and
24 common sense, that a claim satisfies the amount-in-controversy requirements, it
25 need not give credence to a plaintiff’s representation that the value of the claim is
26 indeterminate. Otherwise, a defendant could wrongly be denied the removal to
27 which it is entitled”); *Century Assets Corp. v. Solow*, 88 F. Supp. 2d 659, 661 (E.D.
28 Tex. 2000) (holding that a complaint “can facially state a claim over the

1 jurisdictional amount when there are *no* numbers in the [complaint] at all,” and that
2 removal was untimely where it was apparent from the complaint that an amount
3 sufficient to satisfy the requirements of diversity jurisdiction was in controversy)
4 (emphasis in original) (collecting cases).

5 **CONCLUSION**

6 In this civil action, there is complete diversity of citizenship between Plaintiff
7 and Medtronic. Medtronic is not a citizen of California, and the amount-in-
8 controversy requirement is satisfied. Accordingly, this case is removable to federal
9 court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

10
11 Dated: November 13, 2015

**MEDTRONIC, INC. (incorrectly named as
MEDTRONIC PLC)**

12
13 By: /s/ Julie Cantor
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PROOF OF SERVICE

STATE OF ILLINOIS, COUNTY OF COOK

I am employed in the County of Cook, State of Illinois. I am over the age of 18 and not a party to this action; my business address is 564 W. Randolph St., Ste. 400, Chicago, Illinois 60661.

On **November 13, 2015**, I served the foregoing documents described as: **DEFENDANT MEDTRONIC, INC.'S NOTICE OF REMOVAL; EXHIBITS A - E** on interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

*****SEE ATTACHED SERVICE LIST*****

☐ BY MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Chicago, Illinois.

☒ BY OVERNIGHT DELIVERY: I deposited a true copy of said document(s) and an unsigned copy of this declaration in a sealed envelope, with delivery fees paid or provided for, addressed as follows in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by Federal Express to receive documents.

I declare under penalty of perjury under the laws of the State of Illinois that the above is true and correct. Executed on **November 13, 2015**.


Kerri McKeand

SERVICE LIST

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